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February 3, 2015

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By Overnight Delivery

Hon. Martin Glenn, USBJ  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, New York 10004-1408

Re: In re Residential Capital, LLC et al.  
Jointly Administered under Case No. 12-12020 (Bankr. S.D.N.Y.)

Dear Judge Glenn:

This firm is counsel to the ResCap Borrower Claims Trust (the "Borrower Trust") and the ResCap Liquidating Trust (the "Liquidating Trust"). On November 14, 2014, the Borrower Trust filed an objection [Docket No. 7760] (the "Claims Objection") to Claim Number 5067 filed by Gwendell L. Philpot (the "Philpot Claim"). At Mr. Philpot's request, the Claims Objection is currently scheduled to be heard on March 31, 2015. *See* Notice of Adjournment filed on January 21, 2015 [Docket No. 8005].

On January 28, 2015, we received the enclosed subpoena, dated January 16, 2015 (the "Subpoena"), which appears to request documents related to the Philpot Claim and the Claims Objection, and provides that the requested materials are to be produced by February 16, 2015. The Borrower Trust submits that the Subpoena seeks information that is wholly irrelevant to the Claims Objection. By the records requested in the Subpoena, Mr. Philpot is seeking to establish that he tried to make a mortgage payment online on September 30, 2008, and that his payment was not processed due to technical failures of the payment system. *See* Claims Objection at ¶¶ 12-14. The Borrower Trust has not disputed that Mr. Philpot tried to make the payment. The relevant facts relating to the missed payment are that (a) Mr. Philpot never actually made the payment, which could be disproved by Mr. Philpot's own bank records, and (b) regardless of the reason why the September 2008 mortgage payment was not made when due, the Debtors offered Mr. Philpot the opportunity to make a late payment without penalty, which will be established through the Debtors' servicing records that were filed in support of the Claims Objection. *See* Claims Objection at ¶¶ 35, 38, 40-43. Moreover, it is unclear whether the Liquidating Trust, as the successor to

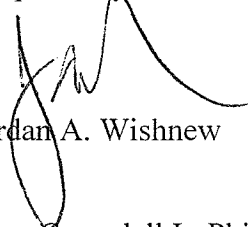
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Debtors' estates, has access to any records and materials that are responsive to the Subpoena beyond the exhibits that were filed in support of the Claims Objection.

In keeping with the Court's general rules of practice, and in order to avoid incurring the potentially unnecessary expense and effort that would be entailed in trying to locate responsive materials at this time, the Borrower Trust requests that the Court treat the March 31, 2015 hearing on the Claims Objection as a pretrial conference, with an evidentiary hearing to be scheduled at a later date only if the Court determines that one is required to resolve disputed factual issues related to this matter. The Borrower Trust and Liquidating Trust further request that the Court stay any obligations to comply with the Subpoena pending a determination by the Court at the March 31, 2015 pretrial conference that the Subpoena seeks information relevant to disputed issues of material fact necessary for the Court to resolve the Claims Objection.<sup>1</sup>

Respectfully submitted,



Jordan A. Wishnew

cc: Gwendell L. Philpot (w/ encl.)

Encl.

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<sup>1</sup> The Borrower Trust and Liquidating Trust reserve all rights with respect to the Subpoena, including, but not limited to, seeking to quash the Subpoena on the basis that it seeks information that is not reasonably accessible because of undue burden or cost.

## UNITED STATES BANKRUPTCY COURT

Southern District

of New York

In re RESIDENTIAL CAPITAL, LLC, et al  
Debtors

SUBPOENA IN A CASE UNDER  
THE BANKRUPTCY CODE

Case No. \* 12-12020 (MG)

To: Deanna Horst  
Senior Director of Claims Management for  
Residential Capital, LLC  
1100 Virginia Drive  
Fort Washington, PA 19034

Chapter 11  
Jointly Administered  
C/O Norman S. Rosenbaum  
MORRISON & FOERSTER LLP, Counsel for the ResCap Borrower Claims Trust  
1290 Avenue of the Americas  
New York, New York 10104 and Counsel for the Debtors and Debtors in Possession

☐ YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

Not applicable

COURTROOM

Not applicable

DATE AND TIME

Not applicable

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Not applicable

DATE AND TIME

Not applicable

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): 1. Computer code and software operational diagrams which provide and show human user interface with verbal prompts correlated to corresponding telephone key actuation commands of software as in operation on September 30, 2008 between the hours of 10:00PM and midnight Central Time, such software code and version which was in use by HOMECOMINGS FINANCIAL, LLC, GMAC Mortgage, LLC (ResCap) within its data processing center for "Pay-By-Phone" mortgage account Payment Processing System which serviced Loan Account Number: 7412259657 for Gwendell L. Philpot. With specificity, requesting all "Pay-By-Phone" logs related to Loan Account Number: 7412259657 between September 15 and October 15, 2008. Integral to said account information, provide the related transactional records (Log Files) of the same account and dates stated above with all data related to calls originating at telephone number 1-256-280-9128 including voice/key actuation command/prompt/reply and (System Administrative Data Log Files) of same activity and events. Include with production of above the product names of software, developers, copyright holders, service providers and computer operating systems of operations. 2. Presentation on August 19, 2008 by Rob Lux, CTO, GMAC ResCap, "Using Data Governance to Support Business Strategy." Certification of above information is required.

PLACE 407 Valley Drive, Attalla, Alabama 35954 with copy to the clerk of the Honorable Martin Glenn at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, Room 501, New York, NY 10004

DATE AND TIME January 26, 2015, 5:00 PM

February 16, 2015, 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

Not applicable

DATE AND TIME

Not applicable

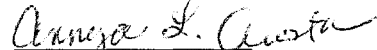
Any organization not a party to this proceeding that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6), Federal Rules of Civil Procedure, made applicable in bankruptcy cases and proceedings by Rules 1018, 7030, and 9014, Federal Rules of Bankruptcy Procedure.

ISSUING OFFICER SIGNATURE AND TITLE

Annya Acosta

Deputy Clerk

CLERK OF COURT

  
Signature of Clerk or Deputy Clerk

DATE

1/16/2015

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

Vito Genna, Clerk of Court

United States Bankruptcy Court, SDNY One Bowling Green, NY, NY 10004

RECEIVED

JAN 28 2014

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